

**NOTICE OF INTENT**

**Department of Health  
Bureau of Health Services Financing**

**Home Health Program  
Home Health Encounters and Services  
(LAC 50:XIII.Chapters 1-5)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:XIII.Chapters 1-5 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

In compliance with Act 299 of the 2011 Regular Session of the Louisiana Legislature, the Department of Health, Bureau of Health Services Financing amended the provisions governing home health services in order to adopt provisions establishing mandatory cost reporting requirements for providers of home health services (*Louisiana Register*, Volume 39, Number 3). The department now proposes to amend the provisions governing home health services in order to comply with U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) regulations requiring face-to-face encounters, to clarify the provisions governing home health services settings, and to remove the visit limit for adult recipients in order to

align services with those received by the Medicaid expansion population.

**Title 50  
PUBLIC HEALTH MEDICAL ASSISTANCE  
Part XIII. Home Health Program  
Subpart 1. Home Health Services**

**Chapter 1. General Provisions**

**§101. Definitions**

**[Formerly LAC 50:XIX.101]**

A. The following words and terms, when used in this Subpart 1, shall have the following meanings, unless the context clearly indicates otherwise:

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*Home Health Services*—patient care services provided in the patient's residential setting or any setting in which normal life activities take place under the order of a physician that are necessary for the diagnosis and treatment of the patient's illness or injury, including one or more of the following services:

a. - e. ...

f. medical supplies, equipment and appliances suitable for use in any setting in which normal life activities take place.

NOTE: Medical supplies, equipment and appliances for home health are reimbursed through the Durable Medical Equipment Program and must be prior authorized.

*Occupational Therapy Services*—medically prescribed treatment to improve, maintain or restore a function which has been impaired by illness or injury or, when the function has been permanently lost or reduced by illness or injury, to improve the individual's ability to perform those tasks required for independent functioning

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AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:431 (March 2004), amended by the Department of Health, Bureau of Health Services Financing, LR 44:

**§103. Requirements for Home Health Services**

**[Formerly LAC 50:XIX.103]**

A. Home health services shall be based on an expectation that the care and services are medically reasonable and appropriate for the treatment of an illness or injury, and that the services can be performed adequately by the agency in the recipient's residential setting or any setting in which normal

life activities take place. For initial ordering of home health services, the physician or authorized non-physician provider (NPP) must document a face-to-face encounter that is related to the primary reason the recipient requires home health services. This face-to-face encounter must occur no more than 90 days before or 30 days after the start of services. For the initial ordering of medical supplies, equipment and appliances, the physician must document that a face-to-face encounter that is related to the primary reason the recipient requires medical equipment occurred no more than six months prior to the start of services. A written plan of care for services shall be evaluated and signed by the physician every 60 days. This plan of care shall be maintained in the recipient's medical records by the home health agency.

B. Home Health services shall be provided in the recipient's residential setting or any setting in which normal life activities take place, other than a hospital, nursing facility, intermediate care facility for individuals with intellectual disabilities or any setting in which payment is, or could be, made under Medicaid for inpatient services that include room and board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:431 (March 2004), amended by the Department of Health, Bureau of Health Services Financing, LR 44:

**Chapter 3. Medical Necessity**

**§301. General Provisions**

**[Formerly LAC 50:XIX.301]**

A. - A.5.f. ...

B. Home health skilled nursing and aide services are considered medically reasonable and appropriate when the recipient's medical condition and medical records accurately justify the medical necessity for services to be provided in their residential setting or any setting in which normal life activities take place, other than a hospital, nursing facility, intermediate care facility for individuals with intellectual disabilities or any setting in which payment is, or could be made, under Medicaid for inpatient services that include room and board rather than in a physician's office, clinic, or other outpatient setting according to guidelines as stated in this Subpart.

C. - D.3. ...

E. Home health services will be authorized upon medical necessity determination based on the state's medical necessity criteria pursuant to LAC 50:I.1101.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:431 (March 2004), amended by the Department of Health, Bureau of Health Services Financing, LR 44:

**§303. Provisions for Infants and Toddlers**

**[Formerly LAC 50:XIX.303]**

A. - C.2. ...

3. failure or lack of cooperation by the child's legal guardian(s) to obtain the required medical services in an outpatient setting.

NOTE: The fact that an infant or toddler cannot ambulate or travel without assistance from another is not a factor in determining medical necessity for services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:432 (March 2004), amended by the

Department of Health, Bureau of Health Services Financing, LR  
44:

**§305. Extended Nursing Services for Ages 0-21**

A. Extended nursing services may be provided to a Medicaid recipient who is age birth through 21 when it is determined to be medically necessary for the recipient to receive a minimum of three continuous hours per day of nursing services. Medical necessity for extended nursing services exists when the recipient has a medically complex condition characterized by multiple, significant medical problems that require nursing care as defined by the Louisiana Nurse Practice Act.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:406 (March 2006), amended by the Department of Health, Bureau of Health Services Financing, LR 44:

**Chapter 5. Retrospective Review**

**§501. Home Health Visits**

**[Formerly LAC 50:XIX.501]**

A. Home health services provided to recipients are subject to post-payment review in order to determine if the recipient's condition warrants high utilization.

B. - C. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:432 (March 2004), amended by the Department of Health, Bureau of Health Services Financing, LR 44:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by assuring that Medicaid recipients receive needed home health services in an efficient and cost-effective manner.

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have a positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 by allowing working family members to maintain stable employment due to the improved delivery of home health services which may reduce the financial burden on families.

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to [MedicaidPolicy@la.gov](mailto:MedicaidPolicy@la.gov). Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, November 29, 2017 at 9:30 a.m. in Room

118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Rebekah E. Gee MD, MPH

Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES

Person  
Preparing

Statement: Yolanda Ellis  
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Dept.: Health  
Office: Bureau of Health Services  
Financing

Return  
Address: P.O. Box 91030  
Baton Rouge, LA

Rule Title: Home Health Program  
Home Health Encounters and  
Services

Date Rule Takes Effect: January 20, 2018

SUMMARY

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. The following summary statements, based on the attached worksheets, will be published in the Louisiana Register with the proposed agency rule.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (SUMMARY)

*It is anticipated that the implementation of this proposed rule will result in net estimated state general fund costs of approximately \$2,053 for FY 17-18, \$3,874 for FY 18-19 and \$3,990 for FY 19-20. It is anticipated that \$1080 (\$540 SGF and \$540 FED) will be expended in FY 17-18 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 63.34 percent in FY 17-18 and 64.23 percent in FY 18-19 and FY 19-20.*

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

*It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$3,155 for FY 17-18 \$6,956 for FY 18-19 and \$7,165 for FY 18-19. It is anticipated that \$540 will be expended in FY 17-18 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 63.34 percent in FY 17-18 and 64.23 percent in FY 18-19.*

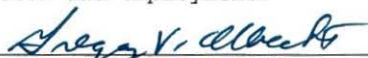
III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

*This proposed Rule amends the provisions governing home health services in order to comply with U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) regulations requiring face-to-face encounters, to clarify the provisions governing home health services settings, and to remove the visit limit for adult recipients in order to align services with those received by the Medicaid expansion population. This proposed Rule may be beneficial to recipients due to the removal of the limit for home health services rendered to adults who may be in need of increased visits. Providers of home health services may also benefit from the removal of the limitation on the number of visits payable by the Medicaid Program. It is anticipated that implementation of this proposed rule will increase programmatic expenditures in the Medicaid program by approximately \$4,128 for FY 17-18, \$10,830 for FY 18-19 and \$11,155 for FY 19-20.*

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

*This rule has no known effect on competition and employment.*

  
\_\_\_\_\_  
Signature of Agency Head  
or Designee

  
\_\_\_\_\_  
Legislative Fiscal Officer  
or Designee

Jen Steele, Medicaid Director  
\_\_\_\_\_  
Typed name and Title of  
Agency Head or Designee

10/9/2017  
\_\_\_\_\_  
Date of Signature

  
\_\_\_\_\_  
LDH/BHSF Budget Head

10/09/17  
\_\_\_\_\_  
Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES

The following information is required in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberations on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

*This proposed Rule amends the provisions governing home health services in order to comply with U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) regulations requiring face-to-face encounters, to clarify the provisions governing home health services settings, and to remove the visit limit for adult recipients in order to align services with those received by the Medicaid expansion population.*

- B. Summarize the circumstances that require this action. If the action is required by federal regulations, attach a copy of the applicable regulation.

*The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing home health services in order to comply with U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) regulations requiring face-to-face encounters, to clarify the provisions governing home health services settings, and to remove the visit limit for adult recipients in order to align services with the Medicaid expansion population.*

- C. Compliance with Act 11 of the 1986 First Extraordinary Session.

- (1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

*Yes, this proposed rule will result in an increase in programmatic expenditures by approximately \$5,205 for FY 17-18, \$10,830 for FY 18-19, \$11,155 for FY 19-20. In FY 17-18, \$1080 is included for the state's administrative expense for promulgation of this proposed rule and the final rule.*

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

- (a) \_\_\_\_\_ If yes, attach documentation.  
(b) \_\_\_\_\_ If no, provide justification as to why this rule change should be published at this time.

FISCAL AND ECONOMIC IMPACT STATEMENT  
WORKSHEET

I. A. COST OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase or (decrease) in cost to implement the proposed action?

COST	FY 17-18	FY 18-19	FY 19-20
PERSONAL SERVICES			
OPERATING EXPENSES	\$1,080	\$0	\$0
PROFESSIONAL SERVICES			
OTHER CHARGES	\$4,128	\$10,830	\$11,155
REPAIR & CONSTR.			
POSITIONS (#)			
<b>TOTAL</b>	<b>\$5,208</b>	<b>\$10,830</b>	<b>\$11,155</b>

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

*The expenses reflected above are the estimated increases in programmatic expenditures in the Medicaid program. In FY 17-18, \$1080 is included for the state's administrative expense for promulgation of this proposed rule and the final rule.*

3. Sources of funding for implementing the proposed rule or rule change.

Source	FY 17-18	FY 18-19	FY 19-20
STATE GENERAL FUND	\$2,053	\$3,874	\$3,990
SELF-GENERATED			
FEDERAL FUND	\$3,155	\$6,956	\$7,165
OTHER (Specify)			
<b>Total</b>	<b>\$5,208</b>	<b>\$10,830</b>	<b>\$11,155</b>

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

*Yes, sufficient funds are available to implement this rule.*

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THIS PROPOSED ACTION.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustment in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

*This proposed rule has no known impact on local governmental units.*

FISCAL AND ECONOMIC IMPACT STATEMENT  
WORKSHEET

2. Indicate the sources of funding of the local governmental unit that will be affected by these costs or savings.

*There is no known impact on the sources of local governmental unit funding.*

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

- A. What increase or (decrease) in revenues can be expected from the proposed action?

REVENUE INCREASE/DECREASE	FY 17-18	FY 18-19	FY 19-20
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS	\$3,155	\$6,956	\$7,165
LOCAL FUNDS			
<b>Total</b>	<b>\$3,155</b>	<b>\$6,956</b>	<b>\$7,165</b>

**\*Specify the particular fund being impacted**

- B. Provide a narrative explanation of each increase or decrease in revenue shown in "A". Describe all data, assumptions, and methods used in calculating these increases or decreases.

*The amounts reflected above are the estimated increases in the federal share of programmatic expenditures for the Medicaid program. In FY 17-18, \$540 is included for the federal expense for promulgation of this proposed rule and the final rule.*

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS

- A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effects on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.)

*This proposed Rule amends the provisions governing home health services in order to comply with U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) regulations requiring face-to-face encounters, to clarify the provisions governing home health services settings, and to remove the visit limit for adult recipients in order to align services with those received by the Medicaid expansion population.*

- B. Also, provide an estimate of any revenue impact resulting from this rule or rule change to these groups.

*This proposed Rule may be beneficial to recipients due to the removal of the limit for home health services rendered to adults who may be in need of increased visits. Providers of home health services may also benefit from the removal of the limitation on the number of visits payable by the Medicaid Program. It is anticipated that implementation of this proposed rule will increase programmatic expenditures in the Medicaid program by approximately \$4,128 for FY 17-18, \$10,830 for FY 18-19 and \$11,155 for FY 19-20.*

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

*This rule has no known effect on competition and employment.*